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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,376	03/01/2004	Ross W. Bauer	RB-001US	4254

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EXAMINER

SHAW, ELIZABETH ANNE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,376

Applicant(s)

BAUER, ROSS W.

Examiner

Elizabeth A. Shaw

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-13 and 15-20 is/are rejected.
 7) ☒ Claim(s) 14 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 9, 12, 13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Brunetto (6,294,240). Brunetto shows a protective cover 10, capable of being used as an animal bed, for a heat emitting structure/vehicle comprising fabric 48 having a sensual quality pleasant to a plurality of animals including cats and dogs. The cover 10 being substantially a rectangle and having a surface area large enough to comfortably contain the animal using it, at least 20 inches preferably larger to allow larger or multiple animals to use the cover. The fabric 48 also contains an attachment means 36 for attaching to the cover 10 and the cover 10 having an attachment means 32 for attachment to the heat emitting structure. It is considered that any part of the cover can act as a pillow section, since no other structure is noted, a pillow section can be any area where the animal places it's head down, that area being a "pillow" section for the head of the animal. Further it is considered that once the fabric is removed from the cover, the fabric is configured for roll-up and that when placed on a heat emitted structure, unless specifically designed against it, all fabric can transmit heat or have heat be felt through it.

Claims 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Flesher (5,158,324). Flesher shows a cover 100, capable of being used as a cushion by a cat, comprising a pad having a top and opposing bottom, the top forming a surface for the cat to lie upon and a plurality of magnets 104 coupled with the pad 100 for easily removing the cover 100 from the metallic hood of a vehicle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunetto in view of McAlister (5,363,804). Brunetto does not teach the use of a pleasant odor. McAlister shows a protective cover 10 comprising fabric 12 having a sensual quality pleasant to a plurality of animals including cats and dogs. The cover 10 being substantially a rectangle and having a surface area large enough to comfortably contain the animal using it, at least 20 inches preferably larger to allow larger or multiple animals to use the cover. The cover also contains an odor pleasant to at least some animals such as cats, col. 3, lines 39-41. With respect to claims 4 and 5, to use the odor teaching of McAlister with the fabric cover of Brunetto would have been obvious to one skilled in the art in order to eliminate unpleasant odor from the area of use around the cover.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunetto in view of Moore et al (5,144,911). Brunetto does not teach the use of fleece. Moore et al show an animal bed 10 having a cover 16 composed of fleece, see col. 3, line1. With respect to claims 6 and 7, to use the fleece material of Moore et al with the cover of Brunetto would have been obvious to one skilled in the art as a replacement of functional equivalents.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brunetto in view of Kaplan (D447,607). Brunetto does not teach the use of a shape. Kaplan shows a pet bed formed in the shape of a cartoon character. With respect to claim 10, to use the shaped bed of Kaplan with the cover of Brunetto would have been obvious to one skilled in the art in order to alter the aesthetic appeal of the device.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brunetto in view of Sandbeck (D465,687). Brunetto does not teach the use of a logo. Sandbeck shows a protective cover having a shape on the surface such as a logo, see fig. 7. With respect to claim11, to use the logo of Sandbeck with the cover of Brunetto would have been obvious to one skilled in the art in order to alter the aesthetic appeal of the device.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunetto in view of Wechsler (6,751,816). Brunetto does not teach rolling or hanging of the device for storage. Wechsler shows a cover 50 capable of being used as an animal cushion configured for roll-up, see figures 4-6, the cover 50 also having a hanging feature 53 to allow the cover to be stored by hanging. With respect to claims 12 and 18, to use the strap 53 of Wechsler with the device of Brunetto as an attachment means

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would have been obvious to one skilled in the art in order to secure the device to its location so that the animal using the device does not push the device from its resting area. With respect to claims 13 and 14, to use the roll-up and hanging feature of Wechsler with the device of Brunetto would have been obvious to one skilled in the art in order to provide various space-saving methods of storing the device when not in use. With respect to claims 19 and 20, the cover of the combination of Brunetto and Wechsler capable of being placed on the hood of a vehicle would have been obvious to one skilled in the art in order to give the animal the benefit of the heat emitted and the height of the vehicle, further the cover can be used on any flat or mostly flat surface of the owner's choosing.

Allowable Subject Matter

Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

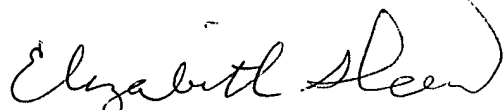
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference are: Sharapov (2005/0055886) and Yang (2005/0070190).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 571-272-6908. The examiner can normally be reached on M-Th 10:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Elizabeth A. Shaw
Examiner
Art Unit 3644

July 21, 2005


TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER